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14 April 1996

Office Of The Secretary  
Federal Communications Commission (FCC)  
Washington DC 20554

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RE: Comments on Notices of Proposed Rulemaking

- Refs: A. IB Docket No. 95-59, Preemption of Local Zoning Regulation of Satellite Earth Stations, FCC 96-78
- B. CS Docket No. 96-83, Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Service, FCC-96-151

Dear Commissioners,

1. As the homeowner association for a 150-unit, townhouse-style, condominium complex, we are very concerned that your proposed rules implementing Section 207 of the Telecommunications Act of 1996 do not adequately address the property rights of our owners. While we endorse the Congressional objective of removing unreasonable barriers to expanding viewers' ability to receive over-the-air television services and can see the merit in a distinction between private-property rights and local-governmental restrictions, we feel it is critical that the implementing rules make clear such viewers' rights do not presumptively usurp—or could be interpreted to usurp—fundamental private-property rights of others.
2. We can see such presumptive usurpation under your currently proposed rules—both for Direct Broadcast Satellite (DBS) service [Ref A], and for Television Broadcast Service (TVBS) and Multichannel Multipoint Distribution Service (MMDS) [Ref B]. Viewers could take your proposed rules to mean viewers can expect, upon demand, actions must be taken—or that they can unilaterally take actions themselves—against any property that impairs their ability to receive such services or to receive them at the level of quality they wish ("reception"), without any regard to issues of property value and structural integrity; your proposed rules only provide for some consideration of safety and health issues.
3. Due to the nature of over-the-air services, placing the reception device/antenna and associated cabling ("antenna") on the viewer's own, personal property may not provide for the reception that the viewer wishes or there may be objects on non-viewer-owned property which physically interfere with (impair) such reception. In such instances, we

see it as unreasonable and inappropriate to establish any regulatory foundation that either does or could be interpreted to allow/require the placing of the antenna on another's property or to require the removal of any such interfering objects without the owner's/owners' permission.

4. Using reception of the DBS service or TVBS in a condominium situation as an example:

a. An individual viewer, from their own premises (owned or rented), may not be able to site an antenna to achieve the reception the viewer desires. (That might be particularly true for a DBS antenna that requires a clear "shot" to the satellite.) The only practical siting of the antenna to achieve the desired reception might be in the condominium common areas and facilities ("Common Elements"). But the viewer—even if a condominium member—does not individually own any of the Common Elements. If the viewer is a member, then they own only their living unit (often an interior-only space), may have an easement for exclusive use of some small portion of the Common Elements (e.g., a patio or deck), and have only a shared interest in the balance of the Common Elements—along with, in our case, all 149 of the other owners. That viewer—whether or not a condominium member—should not expect to have the unilateral right to place the antenna in an area they don't individually own or without any restriction (e.g., on height in both cases, and in the case of TVBS, absolutely nothing on size) in an area to which they only have an easement.

b. Even with a practical siting of an antenna, there may be objects on non-viewer-owned property which physically interfere with the reception. That could include, but not necessarily be limited to, trees (planned, existing size, or subsequent size) (particularly in the case of DBS service) and structures. A viewer—whether or not a condominium member—should not expect a unilateral right to have any and all interfering objects they do not own removed so as to enable reception.

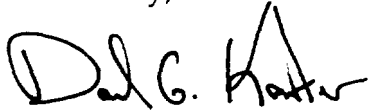
5. There is another very important element which we see as differentiating the propriety of a presumptive override of any related local-governmental restrictions and those restrictions we see as associated with property rights—whether or not in a condominium setting.

a. In the case of local-government restrictions, the viewer has had a very indirect, and often remote, connection with the development and implementation of such restrictions. Therefore, we could see a basis for overriding those restrictions in the federal interest.

b. In the case of private property rights (including homeowner associations), the viewer has had a direct, individual, involvement with having accepted the terms and conditions for the use of their individually owned or rented property—and in the case of a condominium, also with the use of their interest in the Common Elements. Therefore, we see no basis for a federal interest in such freely and mutually agreed-to conditions and thus no basis for the presumptive override of homeowner-association restrictions in this matter which would apply to the Common Elements.

6. In summary, we believe your rules in this matter should not adversely impact private-property rights, including each homeowner association's right to maintain and establish restrictions on the use of their Common Elements—to the extent those restrictions reflect the wishes of the majority of their members. Homeowner associations want to be able to comply with the rules, but we need to receive reasonable accommodations. We ask that you modify/clarify your proposed rules accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read "D.G. Kanter". The signature is stylized with a large, looped "D" and a cursive "K".

DAVID G. KANTER, Treasurer

cc: David H. McClintock, President, Drummer Boy Homes Association, Inc  
Jane H. Goode, Clerk, Drummer Boy Homes Association, Inc  
Alan S. Parkes, Dep Treasurer, Drummer Boy Homes Association, Inc  
Susan D. Erdos, Chairperson, Satellite TV Committee, Drummer Boy Homes  
Association, Inc.